

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

REMARKS

Applicants respectfully request reconsideration and allowance of this application in view of the amendments above and the following comments.

The previous claims have been replaced by a new set of claims. For the Examiner's convenience, Applicants point out that the new claims correspond to the previous claims as follows:

<u>New Claim</u>	<u>Previous Claim</u>
4	1
5	New
6	New
7	2
8	3

No new matter is believed to have been added by this amendment.

The sole issue for consideration is the rejection of the claims under 35 USC § 103(a) as being obvious over Allard et al. ("Allard"), U.S. Patent No. 5,616,331. In response, Applicants respectfully request that the Examiner reconsider and withdraw this rejection.

Applicants submit that the Examiner has not given proper consideration to the fact that the instant claims require that the emulsion is a *microemulsion*. Allard's emulsions are clearly "fine," or, in the Allard's words "ultrafine," *macroemulsions*. As a result, the two preparations are distinctly different, and the instant emulsions are not *prima facie* obvious given Allard's.

In this regard, Applicants would call the Examiner's attention to the discussion in the instant specification at page 2, lines 9-28. There is a discussion of the various types of emulsions, which discussion is summarized in the table below.

Type of Emulsion	Droplet Diameter (μm)	Droplet Diameter (nm)
Macroemulsion	1 to 50	1,000 to 50,000
Fine Macroemulsion	0.1 to 1	100 to 1,000
Microemulsion	0.01 to 0.1	10 to 100

The present emulsions are expressly required in the claims to be *microemulsions*, which have droplet diameters ranging from 10 to 100 nm. Allard, on the other hand, teaches his ultrafine emulsions have droplet diameters ranging from 100 nm to 1,000 nm, which clearly places Allard's preparations in the range of fine *macroemulsions*. Further, Allard expressly

teaches at column 4, lines 58ff, and at column 6, lines 12-16, that it is critical that the droplet diameters be manipulated to this range or, in other words, that a fine *macroemulsion* be obtained.

Since persons skill would attribute to Allard the knowledge of the existence of microemulsions, and of the differences between macroemulsions, fine macroemulsions and microemulsions, such persons would have been expressly led by Allard's teachings away from the preparation of either macroemulsions or microemulsions. Accordingly the present claims are patentable over Allard's teachings notwithstanding the insignificant overlap at the boundary between fine macroemulsions and microemulsions.

Put another way, if Allard considered that his teachings extended to microemulsions, he certainly would not have expressed the criticality of manipulating the droplet diameter to be within that of fine macroemulsions. Allard does not merely characterize this droplet diameter to be preferred. Instead, Allard characterizes this droplet diameter as being essential, which conveys to persons skilled in the art that the teachings are not applicable to macroemulsions or microemulsions.

In short, Applicants submit that there is ample evidence on the record to support the allowance of the present claims. An early notice that these claims have been allowed is, therefore, earnestly solicited.

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (914) 332-1700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,

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By

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Amendment under 37 CFR § 1.116 and the accompanying Request for Continued Examination (RCE) and Petition for Extension of Time (8 pages total) are being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below:

Date: November 29, 2002

By

Kurt G. Briscoe

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